

REMARKS/ARGUMENTS

In response to the Advisory Action mailed on July 9, 2008, following Applicant's response to the Office Action filed June 20, 2008 Applicant respectfully asks the Examiner to enter the Amendments included in its June 20 response. Additionally, with respect to Examiner's conclusion that amended claims 1, 20 and 21 raise new issues and new matter, Applicant respectfully requests Examiner to reconsider the remarks made and filed in its June 20, 2008 response to the Final Office Action (dated March 21, 2008), in light of the additional remarks set forth in this paper.

Claim 1 as stated in the response to the October 4, 2007 Office Action reads as follows:

"A food coloring composition comprising

- (a) a synthetic color selected from the group consisting of Citrus Red No. 2, D&C Red No. 28, D&C Yellow No. 10, FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Red No. 3, FD&C Red No. 40, FD&C Yellow No. 5, FD&C Yellow No. 6, ferrous gluconate, orange B, riboflavin, ultramarine blue, ultramarine green, ultramarine violet and red, and combinations thereof;..."

Following Examiner's 112 rejection of Claims 1 3-7, 10-13, 15-21, and 24-25, for failure to properly claim a Markush group, Applicant amended claims 1, 20 and 21 to conform with Examiner's suggestion and to provide clarification. Claim 1 was amended to read as follows:

"A food coloring composition comprising

- (a) a synthetic color selected from the group consisting of Citrus Red No. 2, D&C Red No. 28, D&C Yellow No. 10, FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Red No. 3, FD&C Red No. 40, FD&C Yellow No. 5, FD&C Yellow No. 6, ferrous gluconate, orange B, riboflavin, ultramarine blue, ultramarine green, ultramarine violet, ultramarine and red, and combinations thereof;..."

Although Examiner notes in the Advisory Action that support [of the "ultramarine red" limitation] is not clear from the claim language or specification, Applicant respectfully disagrees.

Throughout the specification of the instant application, Applicant states that the synthetic color is selected from β -Apo-8'-carotenal, canthaxanthin, β -carotene, **Citrus Red No. 2**, **D&C Red No. 28**, D&C Yellow No. 10, FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, **FD&C Red No. 3**, **FD&C Red No. 40**, FD&C Yellow No. 5, FD&C Yellow No. 6, ferrous gluconate, orange B, riboflavin, ultramarine blue, ultramarine green, **ultramarine violet and red**, and combinations thereof. *See e.g.* paragraphs [0023], [0031]. As one of ordinary skill in the art would recognize, different hues of ultramarine are commonly used in comestibles. Since both ultramarine red and ultramarine violet are synthetic colors that may be used in accordance with the present invention, they were combined into a phrase by the Applicant. Well known grammar rules permit the use of a conjunction when two or more words are being modified by the same word. Such is the case in the present application. Additionally, taking into account that more than one red synthetic color is claimed (all references to red synthetic colors are identified with bold lettering above), there must be some modification of the term “red” in order to clarify which type of red color is named (e.g., RD&C, Citrus, D&C, and ultramarine). Therefore, the phrases “ultramarine blue, ultramarine green, ultramarine violet and red” and “ultramarine blue, ultramarine green, ultramarine violet and *ultramarine red*” are one and the same/interchangeable. (emphasis added).

Moreover, the “ultramarine red” limitation must be, and indeed is, supported by the specification, as it is commonplace in the food and beverage industry and common in the English vernacular to list colors (or any list of items, of that matter) in the manner stated in the specification (i.e., “. . . ultramarine violet and red . . .”). For instance, on the FDA’s “Color Additive Status List”, the ultramarines are listed as follows: “[u]ltramarines (Blue, Green, Pink, Red & Violet) - Externally applied cosmetics, including those for eye area - GMP - 73.2725”. Available online at: <http://www.cfsan.fda.gov/~dms/opa-appc.html>. In a common online reference website, the following information is listed under the search term “ultramarine”, “[t]he different ultramarines—green, blue, red and violet—are finely ground and washed with water.” Available online at: <http://en.wikipedia.org/wiki/Ultramarine>.

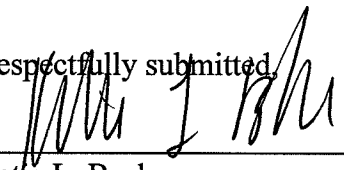
For the reasons stated above, the original claim language and specification support the “ultramarine red” limitation.

CONCLUSION

In view of the above remarks, prompt reconsideration and full allowance of the claims pending in the subject application are respectfully requested. Applicants respectfully submit that the instant application is in condition for allowance and respectfully solicit prompt notification of the same.

Please feel free to contact the undersigned should any questions arise with respect to this case that may be addressed by telephone.

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Respectfully submitted,

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